

Administrative Data Deleted

U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

C1

[REDACTED]

FILE:

[REDACTED]

Office: TEXAS SERVICE CENTER

Date:

SEP 16 2004

IN RE:

Petitioner:

Beneficiary:

[REDACTED]

PETITION: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

*Robert P. Wiemann*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as a minister. The director determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition. The director further determined that the petitioner had failed to establish that it had the ability to pay the beneficiary the proffered salary.

On appeal, counsel submits a brief and additional documentation.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2008, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2008, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

- (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The regulation at 8 C.F.R. § 204.5(m)(1) echoes the above statutory language, and states, in pertinent part, that “[a]n alien, or any person in behalf of the alien, may file a Form I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States.” The regulation indicates that the “religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.”

The regulation at 8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

The petition was filed on March 27, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working as a minister throughout the two-year period immediately preceding that date.

The petitioner states that the proffered position is that of Director of Campus Ministry. In that position, the beneficiary would be responsible for organizing tent meetings or open air evangelical meetings, visiting student apartment complexes and preaching from door to door, conducting monthly bible studies on various student campuses, and administering to the sick, bereaved and discouraged. The petitioner states that the beneficiary has been a member of the petitioner church since March of 1998 and was issued an "ordination license" in that same month and year.

The petitioner submitted copies of its certificate of ordination issued to the beneficiary as well as a "ministerial ordination certificate" issued in November 1995 by the [REDACTED] from which the beneficiary also received a diploma in theology in November of 1995. The record also contains a "certificate to preach" from the seminary, dated November 1995, which states that the beneficiary is a "regularly licensed minister of the gospel of Christ" and authorizes him to perform all of the "functions, rites and ceremonies of the Christian faith and gospel." The beneficiary also has a certificate of ordination from the Riches of Christ Mission Church in Nigeria. This 1977 certificate apparently confirms his ordination as a deacon in the Riches of [REDACTED]. The record does not reflect that these organizations share membership in the same denomination.

The director determined that the petitioner had not established that the beneficiary has worked continuously in a qualifying religious occupation for the two years immediately preceding the filing of the visa classification preference petition. The director determined that the petitioner provided no evidence of the beneficiary's past employment with the petitioner, such as hours worked, salary or other remuneration, or any comprehensive description of the beneficiary's means of financial support during the qualifying two-year period.

On appeal, counsel argues that the director wrongfully classified the beneficiary as engaged in a religious occupation rather than in a religious vocation. He then asserts that the beneficiary's duties are "hard core clergy duties," including "regularly conducted worship, preaching, redemption, healing, deliverance and fulfillment of God's directives to the Disciples." He further asserts that, as the proffered position is a religious vocation, it is not required to be a salaried position under the regulation.

Nonetheless, the petitioner provided no evidence of the services that the beneficiary provided to the petitioner church during the immediate two years prior to filing the visa petition. Although counsel asserts that the

beneficiary performed the duties of the proffered position, no evidence appears in the record. The assertions of counsel are not evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The petitioner stated that it had recently acquired the land to expand its ministry and that it had recently created the position of director of campus ministry. Although the petitioner states that the beneficiary has been an ordained minister of the church since 1998, it provides no evidence of more than the certificate of ordination.

The petitioner has not established that the beneficiary, whether working as a minister or in some other religious occupation, has the required two-year experience that immediately preceded the filing date of the visa petition.

The director also determined that the petitioner has not established its ability to pay the proffered salary. The regulation at 8 C.F.R. § 204.5(g)(2) states, in pertinent part, that:

Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of annual reports, federal tax returns, or audited financial statements.

The petitioner stated its intention of paying the beneficiary \$1,200 per month and to “take care of his immediate needs based on the recommendation of the church board.” The petitioner submitted a statement from the Wells Fargo Bank, indicating that the petitioner maintained two accounts with the bank, one of which carried an average balance of \$5,532 and the other \$4,897. The petitioner also submitted a copy of a financial statement reflecting its financial position as of December 2001. The document appears to have been prepared for the purpose of the petition.

The above-cited regulation states that evidence of ability to pay “shall be” in the form of tax returns, audited financial statements, or annual reports. The petitioner is free to submit other kinds of documentation, but only in addition to, rather than in place of, the types of documentation required by the regulation.

On appeal, the petitioner submitted an audited financial report for the period ending December 2002 and the CPA’s compilation report for the period ending December 2001. As the compilation is based primarily on representations of management, the CPA expressed no opinion as to whether they presented fairly the financial position of the employer for that year. In light of this, limited reliance can be placed on the validity of the facts presented in the 2001 financial statements. No further supporting documentation is included in the record to reflect the assertions made by the accountant in the financial documentation, or contained within the unaudited financial statements.

Additionally, although the petitioner stated that it has taken the responsibility of meeting the beneficiary’s needs until the visa petition is approved, the petitioner provides no evidence of the financial assistance it has provided to the beneficiary.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.